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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8 LDK SOLAR CO., LTD., a People's  
9 Republic of China corporate entity,

10                   Plaintiff,

11                   v.

12                   SILICON & SOLAR, LLC, a Washington  
13 limited liability company,

14                   Defendant.

CASE NO. C09-5077BHS

15                   ORDER GRANTING  
16                   PLAINTIFF'S MOTION FOR  
17                   SUMMARY JUDGMENT

18         This matter comes before the Court on Plaintiff's Motion for Summary Judgment.  
19 Dkt. 19. The Court has considered the pleadings filed in support of and in opposition to  
20 the motion and the remainder of the file and hereby grants the motion for the reasons  
21 stated herein.

22                   **I. FACTUAL AND PROCEDURAL BACKGROUND**

23         Plaintiff LDK Solar Co., Ltd., is a Chinese company that designs and manufactures  
24 multi-crystalline solar wafers, the principal component used to make solar cells that  
25 convert sunlight into electricity. Dkt. 8, Declaration of Zhou Min ("Min Decl."), ¶ 2.  
Defendant Silicon & Solar is a Washington company that has served as Plaintiff's  
supplier of IC grade silicon, a necessary component of solar wafers. *Id.* ¶ 4. Plaintiff  
claims that the parties have done business since 2005 with Plaintiff always paying for the  
silicon in advance of delivery. *Id.* ¶¶ 4-5.

26         Plaintiff claims that in late 2005, Defendant ceased the scheduled deliveries of  
27 silicon. *Id.* ¶ 6. Plaintiff also claims that it has advanced Defendant \$5,749,371.23 for IC

1 grade silicon that Defendant has not delivered. *Id.* ¶ 7. Defendant claims that it is unable  
 2 to refund this money because it has been spent in the regular course of business. Dkt. 12-  
 3 2, Declaration of Renie Duvall, ¶ 14. Defendant also claims that Plaintiff agreed to two  
 4 offsets totaling \$14,786.75 against Defendant's debt. Dkt. 20, Declaration of Renie  
 5 Duvall in Opposition to Motion for Summary Judgment ("Duvall Dec."), ¶ 2.

6 On April 30, 2009, Plaintiff filed a Motion for Summary Judgment. Dkt. 19. On  
 7 May 18, 2009, Defendant filed the Duvall Dec. Dkt. 20. On May 22, 2009, Plaintiff  
 8 replied. Dkt. 21.

## 9 II. DISCUSSION

### 10 A. Summary Judgment Standard

11 Summary judgment is proper only if the pleadings, the discovery and disclosure  
 12 materials on file, and any affidavits show that there is no genuine issue as to any material  
 13 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).  
 14 The moving party is entitled to judgment as a matter of law when the nonmoving party  
 15 fails to make a sufficient showing on an essential element of a claim in the case on which  
 16 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323  
 17 (1985). There is no genuine issue of fact for trial where the record, taken as a whole,  
 18 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*  
 19 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must  
 20 present specific, significant probative evidence, not simply "some metaphysical doubt").  
 21 See also Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if  
 22 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or  
 23 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477  
 24 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d  
 25 626, 630 (9th Cir. 1987).

26 The determination of the existence of a material fact is often a close question. The  
 27 Court must consider the substantive evidentiary burden that the nonmoving party must  
 28

1 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477  
2 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual  
3 issues of controversy in favor of the nonmoving party only when the facts specifically  
4 attested by that party contradict facts specifically attested by the moving party. The  
5 nonmoving party may not merely state that it will discredit the moving party’s evidence at  
6 trial, in the hopes that evidence can be developed at trial to support the claim. *T.W. Elec.*  
7 *Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson, supra*). Conclusory, nonspecific  
8 statements in affidavits are not sufficient, and missing facts will not be presumed. *Lujan*  
9 *v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

10 **B. Plaintiff's Motion**

11 Plaintiff argues that “Since the parties do not dispute [Defendant’s] liability to  
12 [Plaintiff] and since the parties do not dispute the quantum of that liability, summary  
13 judgment is appropriate here.” Dkt. 19 at 3. With regard to liability, the Court agrees.

14 With regard to the amount of liability, Plaintiff initially requested a judgment in  
15 the amount of \$4,438,523.23. *Id.* at 3. Defendant contends that it should be entitled to an  
16 offset of \$14,786.75. Dkt. 20 at 1-2. Plaintiff concedes this offset and requests that  
17 judgment be entered in the amount of \$4,423,736.48. Dkt. 21 at 2. Therefore, the Court  
18 grants Plaintiff’s motion for summary judgment in the amount of \$4,423,736.48.

19 **III. ORDER**

20 Therefore, it is hereby

21 **ORDERED** that Plaintiff’s Motion for Summary Judgment (Dkt. 19) is  
22 **GRANTED** and the clerk shall enter Judgment in favor of Plaintiff for the amount of  
23 \$4,423,736.48.

24 DATED this 28<sup>th</sup> day of May, 2009.

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BENJAMIN H. SETTLE  
United States District Judge